

Resolution No.:	<u>16-1297</u>
Introduced:	<u>March 23, 2010</u>
Adopted:	<u>March 23, 2010</u>

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB718
Abandonment – Portion of Maple Avenue
Avery Lodge Subdivision
Rockville, Maryland

Background

1. By letter dated May 12, 2008, from Ms. Lena Jones, the Applicant, requested the County to abandon a portion of an unimproved road known as “Maple Avenue” in the Avery Lodge Subdivision in Rockville. The portion of Maple Avenue right-of-way for which abandonment is sought adjoins Lot 4, Block 2, owned by the Applicant, and Lot 3, Block 3, owned by Mr. Roland Kircher, and is approximately 50 feet wide and 210 feet long.
2. A portion of the right-of-way proposed for abandonment is used or desired by the Department of Parks to be used for pedestrian access into the Rock Creek Regional Park.
3. A Public Hearing to consider the abandonment proposal was held on January 5, 2009, by the designee of the County Executive.
4. Washington Gas had no objection.
5. Washington Suburban Sanitary Commission did not respond within 60 days and therefore, concurrence is presumed.
6. VERIZON objected unless granted an easement for its existing and future facilities.
7. The Montgomery County Planning Board conditioned its approval upon: a) only the eastern 30 feet of the existing 50-foot right-of-way contiguous to Lot 4, Block 2 be abandoned with the residual 20 feet remaining as public right-of-way; and b) recordation of a new record plat.
8. The Department of Transportation recommended approval conditioned upon: a) the Applicant granting a 20-foot wide perpetual access easement to permit pedestrian access to the adjacent parkland; b) a perpetual access easement over the entire 50-foot wide

right-of-way to permit continued access to Lot 3, Block 3; c) easements for County storm drains and public utilities; and d) Applicant must record a new record plat.

9. The Department of Fire and Rescue Services had no objection.
10. The Police Department had no objection.
11. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
12. The County Executive recommends approval of the proposed abandonment.

Action

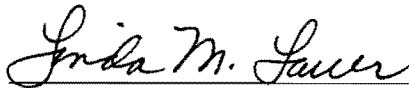
The County Council for Montgomery County, Maryland, finds that the 30 foot strip of right-of-way adjoining Lot 4, Block 2 to five feet past the centerline of the existing right-of-way referred to on the record plat as Maple Avenue and consisting of an estimated length of 210 feet and an area of approximately 6,300 square feet in the Avery Lodge Subdivision proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment of said 30 foot wide strip, subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

1. The area proposed for abandonment must be subject to permanent and perpetual public improvements easement sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage, the form and substance of which must be approved by the Office of the County Attorney for Montgomery County, Maryland.
2. Conveyance to the Jones by Quit Claim Deed of any interest Mr. Kircher or the current owner of 5722 Dimes Road may have in the portion of the right-of-way to be abandoned.
3. Applicant must prepare the public improvement easement and Quit Claim Deed referenced in the preceding paragraphs 1) and 2) and cause each to be duly executed by all necessary owners, mortgagees and lienholders of record and to be recorded in the Land Records for Montgomery County, Maryland.
4. The Applicant must prepare for signature by the Jones and Mr. Kircher (or his successor) a plat redefining the Maple Avenue right-of-way by including the 210 foot long, 30-foot wide portion of the right-of-way being abandoned into Lot 4, Block 2 in the Avery Lodge Subdivision located at 5718 Dimes Road. The plat must be approved by the Department of Transportation prior to the Applicant recording it in the Land Records of Montgomery County, Maryland.
5. Execution of the referenced Quit Claim Deed by Mr. Kircher or any successor in title to the 5722 Dimes Road is in the sole discretion of Mr. Kircher or any such successor and is included in the Public Hearing Officer's Revised Report and

Recommendation as a condition of the abandonment. If Mr. Kircher, or his successor in title to 5722 Dimes Road chooses not to execute a Quit Claim Deed as described above, the recommendations of the original Public Hearing Officer's Report and Recommendation (Copies of the original and revised reports are in the case file maintained by the Department of Transportation) shall be deemed not to be revised or otherwise amended.

6. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.
7. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

A handwritten signature in cursive script, reading "Linda M. Lauer".

Linda M. Lauer, Clerk of the Council